

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04-06-2007

CORAM :

THE HONOURABLE MR.JUSTICE A. KULASEKARAN

W.P. No. 16102 of 2007
and
M.P. No. 1 of 2007

Senthil Kumar

.. Petitioner

Versus

1. Battalion (No.5) (Thalavai)
Tamil Nadu Special Protection Force
5th Regiment, Avadi, Chennai - 600 054

2. The Director General of Police
Chennai - 600 004

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr. R. Muralidharan

ORDER

This writ petition is listed today for admission and I heard the learned counsel for the petitioner.

2. The prayer in this writ petition is for a Writ of Certiorarified Mandamus calling for the records relating to the communication of the first respondent in proceeding No. N.K.A2/ 26923/2006 dated 28.03.2007 as illegal and quash the same and consequently direct the first respondent to appoint the petitioner in a suitable post on compassionate grounds.

3. The Petitioner's father Chinnaraj was employed as Constable in the Tamil Nadu Special Police battalion No.5 and he died in harness on 05.02.1975 leaving behind his widow alone. The Petitioner born only on 15.06.1975. On 15.03.2001, the petitioner's mother sent a representation to the Superintendent of Police, Cuddalore District seeking appointment for the petitioner on compassionate grounds, who in turn forwarded the same to the first respondent, who was the employer of the deceased. On 28.06.2001, the second respondent sent a communication to the first respondent stating that the petitioner has to be informed that he is not

entitled to any appointment on compassionate grounds. The first respondent by his proceedings N.K.A2.23838/2002 pointed out certain discrepancies in the birth certificate issued by the municipality to the petitioner wherein his date of birth is mentioned as 15.06.1975, but the school leaving certificate bears the date of birth as 04.01.1976, hence, the petitioner has filed a suit in O.S. No. 597 of 2003 on the file of District Munsif Court, Cuddalore for mandatory injunction for correcting his date of birth as 15.06.1975 and the same was carried out by the school authorities. According to the petitioner, he has sent representations dated 30.11.2006, 19.02.2007 and 20.02.2007 for which the first respondent has sent a reply in N.K.A2/26923/2006 dated 28.03.2007 rejecting the petitioner's claim for appointment on compassionate grounds on the ground that the application made after three years from the date of death of the government servant is untenable, which is impugned in this writ petition.

4. The learned counsel appearing for the petitioner submitted that the first respondent erred in over looking the fact that the petitioner can claim appointment on compassionate grounds after attaining majority, hence, the finding that the petitioner should have applied for such appointment within a period of three years from the date of death of his father is untenable and prayed for allowing the writ petition.

5. The purpose of providing employment for a dependent of a government servant dying in harness in preference to anybody else is to mitigate the hardship caused to the family of the employee on account of his unexpected death while still in service. To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided there are Rules providing for such appointment. The purpose is to provide immediate financial assistance to the family of a deceased government servant. In this case, the petitioner's father died on 05.02.1975, the petitioner stated to have sent representations prior to 28.02.2007, but no evidence is produced. In so far as the representation dated 28.02.2007 is concerned, admittedly, it was received by the first respondent. G.O. Ms. No.120, Employment Department dated 26.06.1995 contemplates that the application seeking appointment on compassionate grounds should be submitted within a period of three years from the date of death of the employee but in this case, the petitioner has submitted or on his behalf, the representation was sent 20 years after the death of his father.

6. The reason for making compassionate appointments, which is exceptional, is to provide immediate financial assistance to the family of a government servant, who dies in harness when there is no other earning member in his family. No such consideration would normally operate 20 years after the death of a government servant, as held by the Honourable Supreme Court in the decision reported in (State of U.P. And others vs. Paras Nath) (1998) 2 Supreme Court Cases 412.

7. Once it is proved that inspite of death of a bread winner the family survived and substantial period is over, there is no need to make appointment on compassionate grounds at the cost of the interests of several others ignoring the mandate of Article 14 of the Constitution. Followed (State of J & K and others vs. Sajad Ahmed Mir) (2006) 5 Supreme Court Cases 766.

8. In this case, the first respondent has rightly pointed out in the impugned order that the application seeking appointment on compassionate grounds was received from the petitioner or on behalf of the petitioner, after 20 years from the date of death of his father is not valid, besides that the same is contrary to G.O. Ms. No.120, employment department dated 26.06.1995 and ultimately rejected the claim of the petitioner.

9. In view of the above said facts that the application of the petitioner seeking appointment on compassionate grounds is belated and contrary to G.O. Ms. No.120 mentioned above and also following the decisions of the Honourable Supreme Court stated supra, this Court has no other alternative except to dismiss the writ petition holding that the impugned order is valid, accordingly, the writ petition is dismissed at the admission stage itself. No costs. Consequently, connected miscellaneous petition is closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

rsh

To

1. Battalion (No.5) (Thalavai)
Tamil Nadu Special Protection Force
5th Regiment, Avadi
Chennai - 600 054

2. The Director General of Police
Chennai - 600 004

1 cc To Mr.R.Muralidaran, Advocate, SR.31505.
1 cc To The Government Pleader, SR.31754.

WP No. 16102 of 2007

KU(CO)
RVL 09.06.2007